

ATTORNEY GENERAL
STATE OF UTAH



Natural Resource Agencies
301 Empire Building
231 East Fourth South
Salt Lake City, Utah 84111
(801) 533-4446

- **DAVID L. WILKINSON**
ATTORNEY GENERAL
- **PAUL M. TINKER**
DEPUTY ATTORNEY GENERAL

M E M O R A N D U M

DATE: April 29, 1981

TO: Dee C. Hansen, State Engineer
Harold D. Donaldson, Directing Adjudication Engineer
Donald C. Norseth, Directing Distribution Engineer
Jerry R. Olds, Chief Investigator

FROM: Dallin W. Jensen, Assistant Attorney General

RE: Duchesne River Distribution - 1981

Attached is a draft Answer to E.J. Skeen's Petition.

Please go over these responses carefully, paying particular attention to Paragraphs 8, 9, 10 and 13.

Thank you and best regards.

)
) ANSWER OF STATE ENGINEER
) TO PETITION OF
) TABBY IRRIGATION COMPANY, ET AL.,
)
)
) Civil No. 3070
)

The Utah State Engineer answers the Petition of Tabby Irrigation Company, et al., filed herein, as follows:

1. Admits the material allegations contained in Paragraph 1;
2. Denies that said Petition meets the requirements of §73-3-24, Utah Code Annotated 1953, as amended.
3. Admits that the Affidavit attached to said Petition describes certain water rights; alleges that said rights speak for themselves; and denies the remaining allegations of Paragraph 3.
4. Denies that the United States of America has been formally made a party to this action; alleges that Water User's Claim No. 1239, and any other water user's claims filed by the United States speak for themselves; and admits that no claims have been filed herein by or in behalf of the Ute Indian Tribe.
5. Admits that the Ute Indian Tribe claims water rights in the area covered by this action; ^{and} denies the remaining allegations of Paragraph 5.
6. Admits that the statutory provisions cited in Paragraph 6 apply to parties to this proceedings; and denies the remaining allegations of Paragraph 6.
7. Admits the material allegations of Paragraph 7, with the exception that the State Engineer is unable at this point to tell exactly which water users rights will be curtailed because of an inadequate water supply.
8. Admits that the United States Bureau of Reclamation filed Application No. 7781-a; alleges that said Application and any Court Decrees speak for themselves; and deny the remaining allegations of Paragraph 8.
9. Admits that the State Engineer has issued certificates of

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appropriation to the United States Bureau of Indian Affairs; alleges that said certificates speak for themselves; and denies the remaining allegations contained in Paragraph 9.

10. Admits that the rights on the Duchesne River have not been restricted to three acre feet; and denies that this is improper distribution of the waters of this system.

11. Admits that the agreement referred to in Paragraph 11 was executed in 1965; alleges that said agreement speaks for itself; and denies the remaining allegations contained in Paragraph 11.

12. In answer to Paragraph 12, alleges that said agreement speaks for itself; the State Engineer is without knowledge or information sufficient to form a belief as to the views of the parties to said contract; and denies the remaining allegations contained in Paragraph 12.

13. Admits that any prior claims to water on the Duchesne River would reduce the water available for rights with a junior priority; alleges that the rights of individual water users speak for themselves and that the water available for junior appropriators depends upon the water supply available in any given year and the extent of use by owners of prior rights; and denies the remaining allegations of Paragraph 13.

WHEREFORE, the State Engineer prays that:

NOTE: WE WOULD NORMALLY REQUEST THAT THE PETITION BE DISMISSED AND, PERHAPS, THAT IS WHAT YOU WANT TO DO. HOWEVER, YOU MAY DESIRE TO SIMPLY REQUEST THE COURT TO SET THE MATTER FOR HEARING AND ADJUDICATE THE ISSUES RAISED IN THE PETITION.....BUT THE INDIANS WOULD PROBABLY VIEW THAT AS A BREACH OF FAITH ON YOUR PART. IN ANY EVENT, GIVE THIS SOME THOUGHT.....

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